

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 168, 446, 1400L; 1.168(k)-1, 1.1400L(b)-1)

Rev. Proc. 2006-43

SECTION 1. PURPOSE

This revenue procedure provides the exclusive administrative procedures under which a taxpayer described in section 3 of this revenue procedure may obtain automatic consent to change its method of accounting to comply with § 1.168(k)-1 or § 1.1400L(b)-1 of the Income Tax Regulations (the "final regulations").

SECTION 2. BACKGROUND

.01 On August 31, 2006, the Internal Revenue Service and Treasury Department published the final regulations in the Federal Register (TD 9283, 71 FR 51727). Section 1.168(k)-1 prescribes the requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by § 168(k) of the Internal Revenue Code ("bonus depreciation deduction"). Section 1.1400L(b)-1

prescribes the requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by § 1400L(b) ("Liberty Zone bonus depreciation deduction"). The final regulations under § 1.168(k)-1 generally apply to qualified property under § 168(k)(2) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under § 168(k)(4) acquired by a taxpayer after May 5, 2003. The final regulations under § 1.1400L(b)-1 generally apply to qualified New York Liberty Zone property acquired by a taxpayer after September 10, 2001.

.02 Because of revisions made to TD 9091 (68 FR 52986) by the final regulations, taxpayers may need to seek a change in method of accounting to comply with the final regulations. For example, § 1.1400L(b)-1T(b)(4) and (c)(2)(ii) disallowed certain depreciable property from qualifying for the Liberty Zone bonus depreciation deduction. Section 1.1400L(b)-1 amended § 1.1400L(b)-1T(b)(4) and (c)(2)(ii) and, as a result, more depreciable property may qualify for the Liberty Zone bonus depreciation deduction. Section 1.1400L(b)-1(g)(4)(iii) provides that if a taxpayer did not claim on a Federal tax return for a taxable year ending on or after September 11, 2001, and on or before September 1, 2006, any Liberty Zone bonus depreciation deduction for qualified New York Liberty Zone property because of the application of § 1.1400L(b)-1T(b)(4) or because the taxpayer made an election under § 1.168(k)-1T(e)(1) for a class of property that included such qualified New York Liberty Zone property, the taxpayer may claim the Liberty Zone bonus depreciation deduction for that qualified New York Liberty Zone property in accordance with the applicable administrative procedures issued under

§ 1.446-1(e)(3)(ii) for obtaining the Commissioner of Internal Revenue's consent to a change in method of accounting.

.03 The preamble to the final regulations states that the Service and Treasury intend to issue administrative guidance providing procedures for automatic consent for taxpayers that wish to seek a change in method of accounting to comply with the final regulations.

.04 Under §§ 446(e) and 1.446-1(e)(2)(i), a taxpayer generally must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. To obtain the Commissioner's consent to a change in method, § 1.446-1(e)(3)(i) generally requires a taxpayer to file Form 3115, Application for Change in Accounting Method, during the taxable year in which the taxpayer desires to make the proposed change. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.05 Rev. Proc. 2002-9, 2002-1 C.B. 327 (as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432) provides procedures under §§ 446(e) and 1.446-1(e) for obtaining the automatic consent of the Commissioner to change a method of accounting described in the APPENDIX of Rev. Proc. 2002-9.

.06 Rev. Rul. 90-38, 1990-1 C.B. 57, provides that, if a taxpayer uses an

erroneous method of accounting for two or more consecutive taxable years, the taxpayer has adopted a method of accounting. Rev. Rul. 90-38 further provides that a taxpayer may not, without the Commissioner's consent, retroactively change from an erroneous to a permissible method of accounting by filing an amended return.

.07 Section 1.446-1T(e)(2)(ii)(d) provides the changes in computing depreciation that are, and are not, a change in method of accounting under § 446(e). Sections 1.446-1T(e)(2)(ii)(d)(2)(ii), (iii), and (iv) provide the changes in computing depreciation with respect to the bonus depreciation deduction and the Liberty Zone bonus depreciation deduction that are a change in method of accounting. Section 1.446-1T(e)(2)(ii)(d)(3) provides the changes in computing depreciation that are not a change in method of accounting. Section 1.446-1T(e)(2)(ii)(d) applies to property placed in service by the taxpayer in taxable years ending on or after December 30, 2003.

.08 For property placed in service by the taxpayer in taxable years ending before December 30, 2003, Notice CC-2004-007 (January 28, 2004) provides that the Service generally will not assert that a change in computing depreciation for such property that is treated as a capital asset under the taxpayer's present and proposed methods of accounting is a change in method of accounting under § 446(e). Accordingly, the taxpayer may effect this change in computing depreciation by filing amended Federal tax returns or may treat this change in computing depreciation as a change in method of accounting by filing a Form 3115 in accordance with Rev. Proc. 2002-9.

.09 This revenue procedure applies either for a taxpayer's last taxable year ending before October 18, 2006 (if the taxpayer timely files its Federal income tax return

after October 18, 2006, for that last taxable year), or for the taxpayer's first taxable year ending on or after October 18, 2006, for changes to methods of accounting provided in the final regulations. For subsequent taxable years, see the automatic change in method of accounting procedures in Rev. Proc. 2002-9 (or its successor), if applicable, or the advance consent change in method of accounting procedures in Rev. Proc. 97-27, 1997-1 C.B. 680 (as modified and amplified by Rev. Proc. 2002-19, and amplified, clarified, and modified by Rev. Proc. 2002-54) (or its successor). However, if a taxpayer is claiming the rehabilitation credit in accordance with § 1.168(k)-1(g)(6) or § 1.1400L(b)-1(g)(6), the resulting change in computing depreciation for the qualified rehabilitated building must be made by filing amended returns for its placed-in-service year and subsequent taxable years.

SECTION 3. SCOPE

.01 Except as provided in section 3.02, this revenue procedure applies to a taxpayer that seeks a change in method of accounting under § 1.446-1T(e)(2)(ii)(d)(2)(ii), (iii), or (iv) to comply with the final regulations for either: (1) the taxpayer's last taxable year ending before October 18, 2006, if the taxpayer timely files (including extensions) its Federal income tax return after October 18, 2006, for that last taxable year; or (2) the taxpayer's first taxable year ending on or after October 18, 2006.

.02 This revenue procedure does not apply to:

(1) A change in computing depreciation resulting from a taxpayer claiming the rehabilitation credit in accordance with § 1.168(k)-1(g)(6) or § 1.1400L(b)-1(g)(6);

(2) A change in computing depreciation that is not a change in method of

accounting under § 1.446-1T(e)(2)(ii)(d)(3). However if, in accordance with § 1.1400L(b)-1(g)(4)(iii), a taxpayer is changing its computation of depreciation for qualified New York Liberty Zone property because of the amendment made to § 1.1400L(b)-1T(c)(2)(ii) by the final regulations under § 1400L(b) and the taxpayer made an election under § 1.168(k)-1T(e)(1) for the class of property that included such qualified New York Liberty Zone property, § 1.1400L(b)-1(g)(4)(iii) expressly provides that this change in computing depreciation is a change in method of accounting and, thus, § 1.446-1T(e)(2)(ii)(d)(3)(iii) does not apply to such change in computing depreciation.

(3) A change in computing depreciation that is due to a posting error, mathematical error, or a change in underlying facts;

(4) A change in computing depreciation for depreciable property that is placed in service by a taxpayer in a taxable year ending before December 30, 2003, that is a capital asset under the taxpayer's present and proposed methods of accountings, and for which the taxpayer wants to effect the change in computing depreciation to comply with the final regulations by filing amended Federal tax returns in accordance with Notice CC-2004-007 (January 28, 2004);

(5) A change in the treatment of property from a non-capital asset (for example, inventory, materials and supplies) to a capital, depreciable asset (or vice versa); or

(6) A change from expensing the cost of depreciable property to capitalizing and depreciating that cost (or vice versa).

SECTION 4. APPLICATION

.01 A taxpayer within the scope of this revenue procedure is, in accordance with section 6.01 of Rev. Proc. 2002-9, granted the consent of the Commissioner to change to a method of accounting within the scope of this revenue procedure to comply with the final regulations provided the taxpayer follows the automatic change in method of accounting procedures in Rev. Proc. 2002-9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply for the taxpayer's first taxable year ending on or after October 18, 2006, or, if applicable, for the taxpayer's last taxable year ending before October 18, 2006, if the taxpayer timely files its Federal income tax return after October 18, 2006, for that last taxable year; and

(2) For purposes of section 6.02(4)(a) of Rev. Proc. 2002-9, the taxpayer must include on line 1a of the Form 3115 the designated automatic accounting method change number 105.

.02 A change in method of accounting within the scope of this revenue procedure results in a § 481(a) adjustment.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include the automatic change in method of accounting provided in section 4 of this revenue procedure in section 2 of the APPENDIX of Rev. Proc. 2002-9.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective October 18, 2006.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Douglas Kim of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Douglas Kim at (202) 622-3110 (not a toll free call).